

ENROLLED ORDINANCE 159-38

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE
TO CREATE SECTION 2.02(69A) AND REPEAL AND RECREATE SECTION 14
AS IT RELATES TO THE R-3 ZONING DISTRICT
(ZT-1533)

WHEREAS the subject matter of this Ordinance having been approved by the Mukwonago Town Board on June 9, 2004, after Public Hearing and the giving of requisite notice of said hearing, and duly referred and considered by the Waukesha County Park and Planning Commission and a recommendation thereon reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors as required by Section 60.61 of the Wisconsin Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Ordinance amending the text of the Town of Mukwonago Zoning Ordinance, approved by the Mukwonago Town Board on May 9, 1983, to create Section 2.02(69a) and repeal and recreate Section 14 of the Town of Mukwonago Zoning Ordinance as it relates to the R-3 Zoning District, and more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference (ZT-1533), is hereby approved.

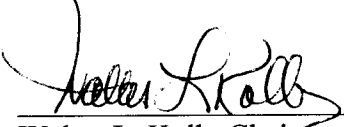
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town of Mukwonago.

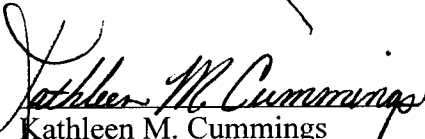
BE IT FURTHER ORDAINED that the Ordinance shall be in full force and effect upon passage, approval and publication.

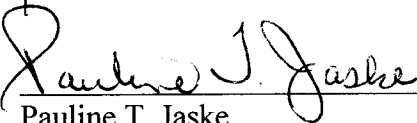
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or with contravention of provisions of this Ordinance are hereby repealed.

AMEND THE TEXT OF THE TOWN OF MUKWONAGO ZONING ORDINANCE TO
CREATE SECTION 2.02(69A) AND REPEAL AND RECREATE SECTION 14 AS IT
RELATES TO THE R-3 ZONING ORDINANCE (ZT-1533)

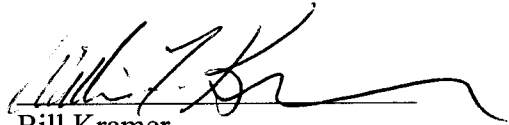
Presented by:
Land Use, Parks, and Environment Committee

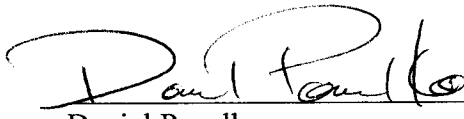

Walter L. Kolb, Chair

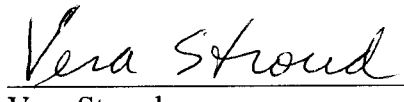

Kathleen M. Cummings


Pauline T. Jaske


Scott J. Klein


Bill Kramer


Daniel Pavelko


Vera Stroud

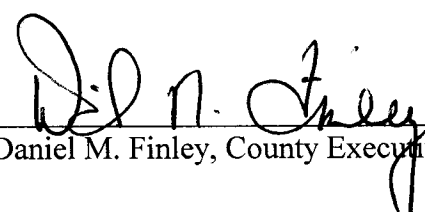
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 8-26-04, 
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: ✓

Vetoed: _____

Date: 8-26-04, 
Daniel M. Finley, County Executive

STATE OF WISCONSIN

TOWN OF MUKWONAGO

WAUKESHA COUNTY

ORDINANCE NO. _____

TO CREATE SECTION 2.02 (69a) AND REPEAL AND
RECREATE SECTION 14 OF THE
ZONING ORDINANCE FOR THE TOWN OF MUKWONAGO

DRAFT

4-16-04

WHEREAS, the Town Planner for the Town of Mukwonago recommended to the Town make amendments to their Zoning Ordinance in order to allow permanent development of legal non-conforming lots of record and

WHEREAS, the Plan Commission for the Town of Mukwonago and Town Board has reviewed the different issues regarding development of legal non-conforming parcels; and

WHEREAS, the Plan Commission for the Town of Mukwonago has also reviewed the recommendation of the Town Planner and concurs that the issue of development of legal non-conforming lots must be addressed; and

WHEREAS, the Town Board of the Town of Mukwonago has also reviewed the recommendation of the Town Planner and concurs with the feeling of the Plan Commission; and

WHEREAS, subject to Section 22.01 of the Zoning Ordinance for the Town of Mukwonago and the provisions of Section 60.62 of the Wisconsin Statutes, the Town Board may from time to time after first submitting a proposal to the Plan Commission for a recommendation after Notice of Public Hearing, amend, supplement, or change the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, upon referral of the matter by the Town Clerk, the Plan Commission for the Town of Mukwonago scheduled a Public Hearing for the Town Board of the Town of Mukwonago and the Plan Commission of the Town of Mukwonago as soon as practical; and

WHEREAS, upon publication of the required notice of the Public Hearing and mailing of said Notice for the Public Hearing to all parties-in-interest as required by Section 23.02 of the Zoning Code for the Town of Mukwonago, the Plan Commission for the Town of Mukwonago and the Town Board for the Town of Mukwonago held a Public Hearing on _____, 2004 at 6:30 p.m., as required by Section 22 of the Zoning Ordinance for the Town of Mukwonago; and

WHEREAS, the Plan Commission for the Town of Mukwonago has recommended to the Town Board for the Town of Mukwonago that this Text Amendment be approved; and

WHEREAS, the Town Board of the Town of Mukwonago, after carefully reviewing the recommendation of the Town Plan Commission of the Town of Mukwonago, having given the matter due consideration, and having based its determination on the effect of approving the petition on the health, general welfare, safety and economic prosperity of the Town, and has given due consideration into the municipal problems involved, hereby determines that the use will not violate the spirit or intent of the Zoning Ordinance for the Town of Mukwonago, will not be contrary to the public health, safety or general welfare of the Town of Mukwonago, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a potential adverse affect on the property values and general desirability of the Town.

RECREATE SECTION 2.02 (69a)

NOW, THEREFORE, the Town Board of the Town of Mukwonago, Waukesha County Wisconsin, DOES ORDAIN AS FOLLOWS:

SECTION 1:

The Town of Mukwonago Zoning Ordinance in Section 2, entitled "Definitions", Subsection 2.02 entitled "Specific Words and Phrases", Subsection 2.02 (69a) entitled "Vegetative Buffer Plan", is hereby created to read as follows:

Section 2.02 (69a) – Vegetative Buffer Plan:

A plan designating native shoreland vegetation which is intended to treat stormwater runoff downslope of impervious surfaces or disturbed areas which is designed to remove sediment, nutrients and other particular pollutants, provide screening and privacy from neighbors and recreational waterbody users, as well as nesting places and travel corridors for wildlife

SECTION 2:

The Town of Mukwonago Zoning Ordinance in Section 14, entitled "R-3, Residential District" is hereby repealed and recreated to read as follows:

Section 14: R-3 Residential District – Statement of Intent:

The R-3 District is a district intended to provide for redevelopment or development of substandard lots of record within 500 feet of a public body of water.

Section 14.01 - Use Regulations**(1) Permitted Uses****(A) Single Family Residences****(B) Permitted Accessory Uses**

1. The following accessory uses shall be permitted in the R-3 District.

a. Private detached garages not to exceed 500 square feet not involving the conduct of a business and not including any sanitary facilities or living quarters.

b. Accessory buildings not to exceed 200 square feet. No more than two detached accessory buildings shall be permitted. The total composite area of all accessory buildings and detached garages shall not exceed 500 square feet.

(C) Keeping of Household Pets

- (D) Home Occupations and Professional Offices as defined in this ordinance when incidental to the residential use in accordance with Section 9.01 (1)(G) of this Ordinance.

Section 14.02 - Building Location

(1) Road Setback

- (A) Principal buildings and accessory buildings shall be erected, altered or placed so that any roofed or enclosed portion is no closer than 50 feet to the base setback line with the following exceptions applicable only where the setback requirements of the properties involved are identical and the use of the buildings is identical, and the existing buildings are legal non-conforming as to road setback.
1. Where the nearest existing building with an identical use as the proposed building on an adjacent lot on one side of said building is within 100 feet of the proposed building or building addition and has less than the required setback, the average between the existing setback of such adjacent building and the required 50 foot setback shall apply.
 2. Where the nearest buildings with an identical use as the proposed building on adjacent lots on both sides of said building are less than 200 feet from each other and have less than the required setback, the average between such existing setbacks shall apply.
 3. In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered to be the nearest existing building for purposes of the exception described in subsection 1, above, in determining the required setback for the proposed addition.

(2) Shore Setback

- (A) 75 feet from the Ordinary High Water Mark of a body of water with the following exceptions applicable only where the setback requirements of the properties involved are identical.
1. Where the nearest existing building with an identical use as the proposed building on an adjacent lot on one side of said building is within 100 feet of the proposed building or building addition and has less than the required setback, the average between the existing setback of such adjacent building and the required 75 foot setback shall apply.
 2. Where the nearest buildings with an identical use as the proposed building on adjacent lots on both sides of said building are less than 200 feet from each other and have less than the required setback, the average between such existing setbacks shall apply.

3. In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered to be the nearest existing building for purposes of the exception described in subsection 1, above, in determining the required setback for the proposed addition.
- (B) 40 feet from the Conservancy/Wetland zoning district boundary if the original grade of the proposed building site is 2 (two) feet above the 100-year floodplain or wetland boundary, with the following exceptions applicable only where the setback requirements of the properties involved are identical.
1. Where the nearest existing building with an identical use as the proposed building on an adjacent lot on one side of said building is within 100 feet of the proposed building or building addition and has less than the required setback. The average between the existing setback of such adjacent building and the required conservancy setback shall apply.
 2. Where the nearest building with an identical use as the proposed building on adjacent lots, on both sides of said building are less than 200 feet from each other and have less than the required conservancy setback. The average between such existing setbacks shall apply.
 3. In the case of a proposed addition to an existing building which has less than the required setback, such existing building may be considered to be the nearest existing building for the purpose of exception described in subsection 1, above, in determining the required setback for the proposed addition
- (C) 75 feet from the Conservancy /Wetland district boundary if the original grade at the proposed building site is less than 2 (two)) feet above the 100-year floodplain or the wetland boundary.
- (3) Offset
- (A) 20 (twenty) feet

Section 14.03 - Height Regulations

- (1) Principle Building
- (A) A point measured from the lowest point of the exposed structure to the highest floor line shall not exceed 12 feet
 - (B) A point measured from the lowest point of the exposed structure to any eave line shall not exceed 24 feet.
 - (C) A point measured from the lowest point of the exposed structure to the highest point of any roof shall not exceed 34 feet.
 - (D) It is the intent of this section that no more than 2 stories of habitable space shall exist when viewed from the waterfront.

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(2) Accessory Building

- (A) A vertical distance of 15 (fifteen) feet maximum, measured from the lowest grade of the structure to the highest point of the roof.

Section 14.04 - Area Regulations

- (1) *Building FootPrint and Impervious Surface:* When a lot has less land area or minimum average width than required in the R-2 zoning district, and was of record at the time of the original adoption of this ordinance (May 9, 1983), unless the owner of said lot owns contiguous property and or an adjacent lot of record, such lot may be used for any purpose permitted in such district but not for residential purposes for more than 1 (one) single family residence. The total building footprint for all buildings and impervious surface on the subject lot shall not exceed the following:

LOT SIZE	TOTAL BUILDING FOOTPRINT	TOTAL IMPERVIOUS SURFACE
Less than 5,000 sq. ft.	1,140 sq. ft.	1,640 sq. ft.
At least 5,000 sq. ft. and less than 10,000 sq. ft.	1,300 sq. ft.	1,800 sq. ft.
At least 10,000 sq. ft. and less than 15,000 sq. ft.	1,400 sq. ft.	1,900 sq. ft.
At least 15,000 sq. ft. and less than 20,000 sq. ft.	1,550 sq. ft.	2,050 sq. ft.
At least 20,000 sq. ft. and less than 25,000 sq. ft.	1,800 sq. ft.	2,300 sq. ft.
At least 25,000 sq. ft. and less than 30,000 sq. ft.	1,900 sq. ft.	2,400 sq. ft.
More than 30,000 sq. ft.	15% Floor Area Ratio	10 % of Total Lot Size

- (2) When a Building Permit is issued on any lot in the R-3 Zoning District, a Vegetative Buffer Plan must be submitted for review and approval by the Town Building Inspector for 70% of all areas between 15 feet from the foundation of the principal building and the Ordinary High Water Mark or 70% of the area draining towards the lake on any lot which does not abut the public water. The Vegetative Buffer Plan must consist of ground cover, shrubs and canopy type vegetation. No impervious surfaces or decks shall be allowed in the Vegetative Buffer Area. The Vegetative Buffer Area must be planted and established prior to an Occupancy Permit being issued for the building or addition, or a cash bond or letter of credit must be posted in an amount equal to 120% of the cost of implementing said plan, which shall include the cost of the plant material, its installation and maintenance. The Town Building Inspector in his review shall have the authority to require a Storm Water Infiltration System, Rain Garden or other approved Best Management Practice (BMP), which will promote the water quality draining into the adjacent water body.
- (3) No boathouses shall be allowed on any lot less than 15,000 square feet in area or having a minimum average width or frontage of less than 100 feet.

Section 14.05 – Special Exception

On any parcel in the R-3 District, where the offsets, setbacks, and building envelope requirements do not allow a minimum of a 1,140 square foot building envelope to accommodate a 900 square foot first floor and a 240 square foot garage, the Town Plan Commission may grant a special exception to allow a building envelope of no more than 1,140 square feet subject to the following procedures, requirements and conditions.

- (1) Procedure: A property owner may apply for a special exception and a special exception may be considered as follows:
 - (A) The property owner shall submit a petition to the Town Clerk. The petition shall include a Vegetative Buffer Plan and building and site plans, which include all elevations along with such additional building information and house designs as may be required by the Building Inspector and the Plan Commission. The building and site plan shall depict the proposed construction, the location of the proposed construction on the lot, the location of the planting of the vegetative buffer, implementation time table and types of plant material, the Ordinary High Water Mark of the adjacent water body and the 100-year flood plain or wetland boundary and its location in relationship to all existing structures on the lot and adjacent lots within 100 feet of proposed structure or addition. If the petition is for an addition to an existing structure, the application shall include recent photographs of all the structures on the parcels. The petition shall be accompanied by payment of such application fees as may be established from time to time by the Town Board by separate resolution and shall be submitted to the Town Clerk no later than three weeks prior to the Town Plan Commission meeting at which they are to be scheduled.
 - (B) Upon receipt of the complete application, required plans and application fees, the Town Clerk shall provide a copy of the petition and plans to the Town Building Inspector and Town Planner and shall place the matter on an upcoming Plan Commission agenda for considerations.
 - (C) Prior to the Town Plan Commission meeting when the matter will be heard, the Town Planner shall review the request and discuss the matter with the Town Building Inspector, view the proposed location and shall submit a written recommendation to the Town Plan Commission. Along with the recommendation, the Town Planner shall advise the Town Plan Commission as to whether the proposed construction will be in compliance with all applicable State, Federal, Waukesha County and Town of Mukwonago codes, statutes, rules, regulations and ordinances if the special exception were granted.
 - (D) The Town Plan Commission shall consider the matter at the next scheduled Plan Commission meeting provided said application is filed at least 21 days prior to said meeting. The petitioner shall be given an opportunity to be heard regarding the matter at the scheduled meeting.
 - (E) The Town Plan Commission shall approve, deny or conditionally approve the special exception petition in accordance with the requirements and conditions of this section. The Town Plan Commission shall issue its decision in writing.

159-0-027

10.

- (2) Requirements and Conditions: In order to approve or conditionally approve a special exception petition, the Town Plan Commission must find all the following to be true regarding the proposed construction.
- (A) The proposed construction must be outside of the 100-year flood plain and the first floor must be at least 2 (two) feet above the 100-year flood plain.
 - (B) The proposed construction must be in compliance with all applicable State, Federal, Waukesha County and Town of Mukwonago codes, statutes, rules, regulations and ordinances if the special exception is granted.
 - (C) The proposed construction must be aesthetically compatible with the surrounding neighborhood.
 - (D) The Town Plan Commission shall require the petitioner to file a Deed Restriction stating that the proposal has been authorized through the special exception procedure in the Town of Mukwonago Zoning Ordinance. Such Deed Restrictions shall be recorded with the Waukesha County Register of Deeds in a form that is subject to the approval of the Town of Mukwonago Attorney.
 - (E) The Town Plan Commission must find that the special exception will not have an adverse impact on the health, safety or general welfare, will not conflict with the spirit and intent of the Town of Mukwonago Zoning Ordinance, and will not otherwise be detrimental to the Town of Mukwonago or the immediate neighborhood where the construction would be located.
 - (F) The Town Plan Commission may require additional conditions and restrictions, including but not limited to conditions related to screening and landscaping.
 - (G) A Deed Restriction in a form approved by the Town attorney shall be filed in the Waukesha County Register of Deeds office prior to issuance of any Building Permit, indicating a special exception has been granted and recording any conditions of approval, including the statement that the structure may only be used for personal use and cannot be used for any type of commercial purposes unless otherwise permitted by the Town of Mukwonago Zoning Ordinance.
 - (H) A Vegetative Buffer Plan of at least 35 feet in depth over 70% of the width of the lot from the residence to the Ordinary High Water Mark, or if there is less than a 35 foot distance from the residence to the Ordinary High Water Mark, 70% of the width of the lot or on the down slope side of the area draining towards the lake on lots which do not abut the public body of water consisting of ground cover, shrubs and canopies must be planted prior to an Occupancy Permit being issued on the new structure or addition and a Deed Restriction preserving said buffer must be recorded in the Waukesha County Register of Deeds office prior to issuance of the Building Permit.
 - (I) No special exceptions shall be allowed from the height requirements of this R-3 Zoning District.

SECTION 3: SEVERABILITY.

The several sections of this Ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of the court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance which shall remain. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this Ordinance are hereby repealed to those terms that conflict.

SECTION 4: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon passage and posting or publication as required by law following approval by the Waukesha County Board of Supervisors.

Dated this _____ day of _____, 2004

TOWN OF MUKWONAGO

David Dubey, Town Chairman

ATTEST:

Katherine W. Wilson, Town Clerk

Published and posted this _____ day of _____, 2004.

KM:es

Typist Time: 20 min

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-08/24/04

(ORD) NUMBER-1590027

1 K. HERRO.....AYE
3 D. STAMSTA.....AYE
5 J. MARCHESE.....AYE
7 J. JESKEWITZ.....AYE
9 P. HAUKOHL.....AYE
11 K. HARENDA.....AYE
13 J. MORRIS.....AYE
15 D. SWAN.....AYE
17 J. BEHREND.....AYE
19 W. MITCHELL.....AYE
21 W. KOLB.....AYE
23 J. TORTOMASI.....AYE
25 K. CUMMINGS.....AYE
27 D. PAULSON.....AYE
29 T. BULLERMANN.....AYE
31 V. STROUD.....AYE
33 D. PAVELKO.....AYE
35 C. SEITZ.....AYE

2 R. THELEN.....AYE
4 H. CARLSON.....AYE
6 D. BROESCH.....AYE
8 J. DWYER.....AYE
10 S. WOLFF.....AYE
12 J. GRIFFIN.....AYE
14 A. KALLIN.....AYE
16 R. MANKE.....AYE
18 B. MORRIS.....AYE
20 M. KIPP.....AYE
22 G. BRUCE.....
24 B. KRAMER.....AYE
26 S. KLEIN.....AYE
28 P. JASKE.....AYE
30 K. NILSON.....AYE
32 P. GUNDRUM.....AYE
34 R. SINGERT.....AYE

TOTAL AYES-34

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

TOTAL VOTES-34